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FILED IN THE U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FEB 22 2023

SEAN F. MCAVOY, CLERK

YAKIMA, WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Case No.: 1:20-CR-02046-SAB

Plaintiff,

Plea Agreement

v.

CHARLIE JIM PETERS,

Defendant.

Plaintiff United States of America, by and through Vanessa R. Waldref, United States Attorney the Eastern District of Washington, and Michael D. Murphy, Assistant United States Attorney for the Eastern District of Washington, and Defendant Charlie Jim Peters (“Defendant”), both individually and by and through Defendant’s counsel, Kenneth Therrien, Esq., agree to the following Plea Agreement.

1. Guilty Plea and Maximum Statutory Penalties

Defendant agrees to enter a plea of guilty to the Indictment filed on December 8, 2020, which charges Defendant with Sexual Abuse, in violation of 18 U.S.C. §§ 1153, 2242(2)(B), a Class A felony.

Defendant understands that the following potential penalties apply:

- a. a term of imprisonment of up to a lifetime;

- 1 b. a term of supervised release of not less than 5 years and up to a
- 2 lifetime;
- 3 c. a fine of up to \$250,000;
- 4 d. restitution;
- 5 e. pursuant to 18 U.S.C. § 3014, absent a finding of indigence, a
- 6 mandatory special assessment of \$5,000; and
- 7 f. a \$100 special penalty assessment.

8 2. Supervised Release

9 Defendant understands that if Defendant violates any condition of
10 Defendant's supervised release, the Court may revoke Defendant's term of
11 supervised release, and require Defendant to serve in prison all or part of the term
12 of supervised release authorized by statute for the offense that resulted in such term
13 of supervised release without credit for time previously served on postrelease
14 supervision, up to the following terms:

- 15 a. 5 years in prison if the offense that resulted in the term of
16 Supervised Release is a class A felony,
- 17 b. 3 years in prison if the offense that resulted in the term of
18 Supervised Release is a class B felony, and/or
- 19 c. 2 years in prison if the offense that resulted in the term of
20 Supervised Release is a class C felony.

21 Accordingly, Defendant understands that if Defendant commits one or more
22 violations of supervised release, Defendant could serve a total term of
23 incarceration greater than the maximum sentence authorized by statute for
24 Defendant's offense or offenses of conviction.

25 3. The Court is Not a Party to this Plea Agreement

26 The Court is not a party to this Plea Agreement and may accept or reject it.
27 Defendant acknowledges that no promises of any type have been made to
28 Defendant with respect to the sentence the Court will impose in this matter.

1 Defendant understands the following:

- 2 a. sentencing is a matter solely within the discretion of the Court;
- 3 b. the Court is under no obligation to accept any recommendations
- 4 made by the United States or Defendant;
- 5 c. the Court will obtain an independent report and sentencing
- 6 recommendation from the United States Probation Office;
- 7 d. the Court may exercise its discretion to impose any sentence it
- 8 deems appropriate, up to the statutory maximum penalties;
- 9 e. the Court is required to consider the applicable range set forth
- 10 in the United States Sentencing Guidelines, but may depart
- 11 upward or downward under certain circumstances; and
- 12 f. the Court may reject recommendations made by the United
- 13 States or Defendant, and that will not be a basis for Defendant
- 14 to withdraw from this Plea Agreement or Defendant's guilty
- 15 plea.

16 4. Waiver of Constitutional Rights

17 Defendant understands that by entering this guilty plea, Defendant is

18 knowingly and voluntarily waiving certain constitutional rights, including the

19 following:

- 20 a. the right to a jury trial;
- 21 b. the right to see, hear and question the witnesses;
- 22 c. the right to remain silent at trial;
- 23 d. the right to testify at trial; and
- 24 e. the right to compel witnesses to testify.

25 While Defendant is waiving certain constitutional rights, Defendant

26 understands that Defendant retains the right to be assisted by an attorney through

27 the sentencing proceedings in this case and any direct appeal of Defendant's

1 conviction and sentence, and that an attorney will be appointed at no cost if
2 Defendant cannot afford to hire an attorney.

3 Defendant understands and agrees that any defense motions currently
4 pending before the Court are mooted by this Plea Agreement, and Defendant
5 expressly waives Defendant's right to bring any additional pretrial motions.

6 **5. Elements of the Offense**

7 The United States and Defendant agree that in order to convict Defendant of
8 Sexual Abuse, in violation of 18 U.S.C. §§ 1153, 2242(2)(B), the United States
9 would have to prove the following beyond a reasonable doubt.

- 10 a. *First*, the defendant knowingly engaged in a sexual act with
11 Minor 1;
- 12 b. *Second*, Minor 1 was physically incapable of declining
13 participation in, or communicating unwillingness to engage in,
14 that sexual act;
- 15 c. *Third*, the sexual act occurred in Indian Country; and
- 16 d. *Fourth*, the defendant is an Indian.

17 In this case, "sexual act" means the intentional touching, not through the clothing,
18 of the genitalia of Minor 1, a minor who had not attained the age of 16 years and
19 such touching was done with an intent to abuse, humiliate, harass, degrade, arouse
20 and gratify the sexual desire of any person.

21 **6. Factual Basis and Statement of Facts**

22 The United States and Defendant stipulate and agree to the following: the
23 facts set forth below are accurate; the United States could prove these facts beyond
24 a reasonable doubt at trial; and these facts constitute an adequate factual basis for
25 Defendant's guilty plea.

26 The United States and Defendant agree that this statement of facts does not
27 preclude either party from presenting and arguing, for sentencing purposes,
28

1 additional facts that are relevant to the Sentencing Guidelines computation or
 2 sentencing, unless otherwise prohibited in this Plea Agreement.

3 On or about July 12, 2020, in the Eastern District of Washington and within
 4 the exterior boundaries of the Yakama Nation, Defendant, Charley Jim Peters, was
 5 staying at the home of Minor 1's grandfather. Minor 1, who had not reached the
 6 age of 16 years at that time, and her sister were sleeping within a camper at that
 7 property. In the morning, Minor 1 reported that she had been raped. She told law
 8 enforcement that she fell asleep on a bunk in the camper and woke up with
 9 Defendant on top of her with his penis inside her vagina. She also reported that
 10 Defendant had been drinking alcohol before this had happened. Minor 1's sister,
 11 who was sleeping in the bunk above her, woke up because the bed was shaking and
 12 saw Defendant above her sister and, when she started to get out of bed, Defendant
 13 ran out of the camper.

14 DNA comparison of a swab taken on July 12, 2020 from Minor 1's
 15 perineal/vulvar area returned a result a mixture of male and female DNA. That
 16 swab was compared to Defendant's DNA as well as Minor 1's DNA and it is 5.0
 17 quadrillion times more likely that Defendant and Minor 1 are the contributors to
 18 that mixture than if it were Minor 1 and an unknown, unrelated person who were
 19 the contributors. Defendant's DNA was also detected on beverage cans recovered
 20 from the camper.

21 Defendant touched Minor 1 on her genitalia, not through her clothing, on or
 22 about July 12, 2020 and he did so with the intent to gratify his sexual desire and
 23 began to do so while she was asleep.

24 Defendant is an enrolled member of the Yakama Nation and for that reason,
 25 and by blood, is considered an Indian under Federal law.

26 7. The United States' Agreements

27 The United States Attorney's Office for the Eastern District of Washington
 28 agrees not to bring additional charges against Defendant based on information in

1 its possession at the time of this Plea Agreement that arise from conduct that is
2 either charged in the Indictment or identified in discovery produced in this case,
3 unless Defendant breaches this Plea Agreement before sentencing.

4

5 8. United States Sentencing Guidelines Calculations

6 Defendant understands and acknowledges that the United States Sentencing
7 Guidelines (“U.S.S.G.” or “Guidelines”) apply and that the Court will determine
8 Defendant’s advisory range at the time of sentencing, pursuant to the Guidelines.
9 The United States and Defendant agree to the following Guidelines calculations.

10 a. Base Offense Level

11 The United States and the Defendant agree that the base offense level for
12 Sexual Abuse is 30. U.S.S.G. § 2A3.1(a)(2).

13 b. Special Offense Characteristics

14 The United States and the Defendant agree that Defendant’s base offense
15 level is increased by 2 levels because Minor 1 was over the age of twelve years but
16 under the age of sixteen years. U.S.S.G. § 2A3.1(b)(2)(B).

17 c. Acceptance of Responsibility

18 The United States will recommend that Defendant receive a three-level
19 downward adjustment for acceptance of responsibility, pursuant to U.S.S.G.
20 § 3E1.1(a), (b), if Defendant does the following:

- 21 i. accepts this Plea Agreement;
- 22 ii. enters a guilty plea at the first Court hearing that takes
23 place after the United States offers this Plea Agreement;
- 24 iii. demonstrates recognition and affirmative acceptance of
25 Defendant’s personal responsibility for Defendant’s
26 criminal conduct;
- 27 iv. provides complete and accurate information during the
28 sentencing process; and

1 v. does not commit any obstructive conduct.

2 The United States and Defendant agree that at its option and on written
3 notice to Defendant, the United States may elect not to recommend a reduction for
4 acceptance of responsibility if, prior to the imposition of sentence, Defendant is
5 charged with, or convicted of, any criminal offense, or if Defendant tests positive
6 for any controlled substance.

7 d. No Other Agreements

8 The United States and Defendant have no other agreements regarding the
9 Guidelines or the application of any Guidelines enhancements, departures, or
10 variances. Defendant understands and acknowledges that the United States is free
11 to make any sentencing arguments it sees fit, including arguments arising from
12 Defendant's uncharged conduct, conduct set forth in charges that will be dismissed
13 pursuant to this Agreement, and Defendant's relevant conduct.

14 e. Criminal History

15 The United States and Defendant have no agreement and make no
16 representations about Defendant's criminal history category, which will be
17 determined by the Court after the United States Probation Office prepares and
18 discloses a Presentence Investigative Report.

19 9. Incarceration

20 The United States agrees to recommend a sentence of 72 months
21 incarceration.

22 Defendant may recommend any legal sentence.

23 10. Sex Offender Registration

24 Defendant understands that by pleading guilty, Defendant will be required to
25 register as a sex offender upon release from prison as a condition of supervised
26 release, pursuant to 18 U.S.C. § 3583(d).

27 Defendant also understands that independent of Defendant's term of
28 supervised release, Defendant will be subject to federal and state sex offender

1 registration requirements, and that those requirements may apply throughout
2 Defendant's lifetime.

3 Defendant agrees that during the duration of Defendant's registration
4 requirement, Defendant will keep Defendant's registration current with the state
5 sex offender registration agency or agencies of any state in which Defendant lives
6 or resides for more than 72 hours.

7 Defendant agrees that during the duration of Defendant's registration
8 requirement, Defendant will notify and verify with the state sex offender
9 registration agency or agencies of any state in which Defendant lives or resides for
10 more than 72 hours, of changes to Defendant's name, place of residence, place of
11 employment, education, or religious worship, and any other information required
12 by such agency or agencies.

13 Defendant understands that Defendant will be subject to possible federal and
14 state penalties for failure to comply with any such requirements. Defendant
15 understands that under 18 U.S.C. § 4042(c), notice will be provided to certain law
16 enforcement agencies upon Defendant's release from confinement.

17 As a condition of Supervised Release, Defendant shall initially register with
18 the state sex offender registration of the state of Defendant's release, and shall also
19 register with the state sex offender agency in any state where defendant resides, is
20 employed, works, or is a student, as directed by the Probation Officer.

21 Defendant shall provide proof of registration to the Probation Officer within
22 72 hours of release.

23 11. Supervised Release

24 The United States and Defendant each agree to recommend 5 years of
25 supervised release. Defendant agrees that the Court's decision regarding the
26 conditions of Defendant's Supervised Release is final and non-appealable; that is,
27 even if Defendant is unhappy with the conditions of Supervised Release ordered by
28 the Court, that will not be a basis for Defendant to withdraw Defendant's guilty

1 plea, withdraw from this Plea Agreement, or appeal Defendant's conviction,
2 sentence, or any term of Supervised Release.

3 The United States and Defendant agree to recommend that in addition to the
4 standard conditions of supervised release imposed in all cases in this District, the
5 Court should also impose the following conditions:

- 6 a. The United States Probation Officer may conduct, upon
7 reasonable suspicion, and with or without notice, a search of
8 Defendant's person, residences, offices, vehicles, belongings,
9 and areas under Defendant's exclusive or joint control.
- 10 b. Defendant shall participate and complete such drug testing and
11 drug treatment programs as the Probation Officer directs.
- 12 c. Defendant shall complete mental health evaluations and
13 treatment, including taking medications prescribed by the
14 treatment provider. Defendant shall allow reciprocal release of
15 information between the Probation Officer and the treatment
16 provider. Defendant shall contribute to the cost of treatment
17 according to the Defendant's ability.

18 12. Criminal Fine

19 The United States and Defendant may make any recommendation
20 concerning the imposition of a criminal fine. Defendant acknowledges that the
21 Court's decision regarding a fine is final and non-appealable; that is, even if
22 Defendant is unhappy with a fine ordered by the Court, that will not be a basis for
23 Defendant to withdraw Defendant's guilty plea, withdraw from this Plea
24 Agreement, or appeal Defendant's conviction, sentence, or fine.

25 13. Mandatory Special Penalty Assessment

26 Defendant agrees to pay the \$100 mandatory special penalty assessment to
27 the Clerk of Court for the Eastern District of Washington, pursuant to 18 U.S.C.
28 § 3013. Defendant further agrees to pay the \$5,000 mandatory special penalty

1 assessment pursuant to 18 U.S.C. § 3014, absent a finding of indigence by the
2 Court.

3 14. Restitution

4 The United States and Defendant agree that restitution is appropriate and
5 mandatory, without regard to Defendant's economic situation, to identifiable
6 victims who have suffered physical injury or pecuniary loss, pursuant to 18 U.S.C.
7 §§ 3663A, 3664.

8 Pursuant to 18 U.S.C. § 3663(a)(3), Defendant voluntarily agrees to pay
9 restitution for all losses caused by Defendant's individual conduct, in exchange for
10 the United States not bringing additional potential charges, regardless of whether
11 counts associated with such losses will be dismissed as part of this Plea
12 Agreement. With respect to restitution, the United States and Defendant agree to
13 the following:

14 a. Restitution Amount and Interest

15 The United States and Defendant stipulate and agree that, pursuant to 18
16 U.S.C. §§ 3663, 3663A and 3664, the Court should order restitution in an amount
17 no greater than \$5,000, and that any interest on this restitution amount, if any,
18 should be waived.

19 b. Payments

20 To the extent restitution is ordered, the United States and Defendant agree
21 that the Court will set a restitution payment schedule based on Defendant's
22 financial circumstances. 18 U.S.C. § 3664(f)(2), (3)(A). Regardless, Defendant
23 agrees to pay not less than 10% of Defendant's net monthly income towards
24 restitution.

25 c. Treasury Offset Program and Collection

26 Defendant understands the Treasury Offset Program ("TOP") collects
27 delinquent debts owed to federal agencies. If applicable, the TOP may take part or
28 all of Defendant's federal tax refund, federal retirement benefits, or other federal

1 benefits and apply these monies to Defendant's restitution obligations. 26 U.S.C.
2 § 6402(d); 31 U.S.C. § 3720A; 31 U.S.C. § 3716.

3 Defendant understands that the United States may, notwithstanding the
4 Court-imposed payment schedule, pursue other avenues to ensure the restitution
5 obligation is satisfied, including, but not limited to, garnishment of available funds,
6 wages, or assets. 18 U.S.C. §§ 3572, 3613, and 3664(m).

7 Nothing in this acknowledgment shall be construed to limit Defendant's
8 ability to assert any specifically identified exemptions as provided by law, except
9 as set forth in this Plea Agreement.

10 Until Defendant's fine and restitution obligations are paid in full, Defendant
11 agrees fully to disclose all assets in which Defendant has any interest or over
12 which Defendant exercises control, directly or indirectly, including those held by a
13 spouse, nominee or third party.

14 Until Defendant's fine and restitution obligations are paid in full, Defendant
15 agrees to provide waivers, consents, or releases requested by the U.S. Attorney's
16 Office to access records to verify the financial information.

17 d. Notifications and Waivers

18 Defendant agrees to notify the Court and the United States of any material
19 change in Defendant's economic circumstances (e.g., inheritances, monetary gifts,
20 changed employment, or income increases) that might affect Defendant's ability to
21 pay restitution. 18 U.S.C. § 3664(k). Defendant also agrees to notify the United
22 States of any address change within 30 days of that change. 18 U.S.C.
23 § 3612(b)(1)(F). These obligations cease when Defendant's fine and restitution
24 obligations are paid in full.

25 Defendant acknowledges that the Court's decision regarding restitution is
26 final and non-appealable; that is, even if Defendant is unhappy with the amount of
27 restitution ordered by the Court, that will not be a basis for Defendant to withdraw
28 Defendant's guilty plea, withdraw from this Plea Agreement, or appeal

1 Defendant's conviction, sentence, or restitution order.

2 15. Payments While Incarcerated

3 If Defendant lacks the financial resources to pay the monetary obligations
4 imposed by the Court, Defendant agrees to earn money toward these obligations by
5 participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

6 16. Additional Violations of Law Can Void Plea Agreement

7 The United States and Defendant agree that the United States may, at its
8 option and upon written notice to the Defendant, withdraw from this Plea
9 Agreement or modify its sentencing recommendation if, prior to the imposition of
10 sentence, Defendant is charged with or convicted of any criminal offense or tests
11 positive for any controlled substance.

12 17. Waiver of Appeal Rights

13 Defendant understands that Defendant has a limited right to appeal or
14 challenge Defendant's conviction and the sentence imposed by the Court.

15 Defendant expressly waives all of Defendant's rights to appeal Defendant's
16 conviction and the sentence the Court imposes.

17 Defendant expressly waives Defendant's right to appeal any fine, term of
18 supervised release, or restitution order imposed by the Court.

19 Defendant expressly waives the right to file any post-conviction motion
20 attacking Defendant's conviction and sentence, including a motion pursuant to 28
21 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from
22 information not now known by Defendant and which, in the exercise of due
23 diligence, Defendant could not know by the time the Court imposes sentence.

24 Nothing in this Plea Agreement shall preclude the United States from
25 opposing any post-conviction motion for a reduction of sentence or other attack
26 upon the conviction or sentence, including, but not limited to, writ of habeas
27 corpus proceedings brought pursuant to 28 U.S.C. § 2255.

1 18. Compassionate Release

2 In consideration for the benefits Defendant is receiving under the terms of
3 this Plea Agreement, Defendant expressly waives Defendant's right to bring any
4 motion for Compassionate Release other than a motion arising from one of the
5 specific bases set forth in this paragraph of this Plea Agreement. The United States
6 retains the right to oppose, on any basis, any motion Defendant files for
7 Compassionate Release.

8 The only bases on which Defendant may file a motion for Compassionate
9 Release in the Eastern District of Washington are the following:

10 a. Medical Condition of Defendant

11 i. Defendant is suffering from a terminal illness (i.e., a
12 serious and advanced illness with an end of life
13 trajectory). A specific prognosis of life expectancy (i.e.,
14 a probability of death within a specific time period) is not
15 required. Examples include metastatic solid-tumor
16 cancer, amyotrophic lateral sclerosis (ALS), end-stage
17 organ disease, and advanced dementia; or

18 ii. Defendant is suffering from a serious physical or medical
19 condition, a serious functional or cognitive impairment,
20 or deteriorating physical or mental health because of the
21 aging process that substantially diminishes the ability of
22 the defendant to provide self-care within the environment
23 of a correctional facility and from which Defendant is not
24 expected to recover.

25 b. Age of Defendant

26 i. Defendant is at least 65 years old, is experiencing a
27 serious deterioration in physical or mental health because
28 of the aging process; and has served at least 10 years or

75 percent of Defendant's term of imprisonment,
whichever is less; or

- ii. Defendant is at least 70 years old and has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which Defendant is imprisoned.

c. **Family Circumstances**

- i. The caregiver of Defendant's minor child or children has died or become incapacitated, and Defendant is the only available caregiver for Defendant's minor child or children; or
 - ii. Defendant's spouse or registered partner has become incapacitated, and Defendant is the only available caregiver for Defendant's spouse or registered partner.

d. Subsequent Reduction to Mandatory Sentence

- i. Defendant pleaded guilty to an offense which, on the date of Defendant's guilty plea, carried a mandatory minimum sentence; and
 - ii. after the entry of judgment, the length of the mandatory minimum sentence for Defendant's offense of conviction was reduced by a change in the law; and
 - iii. the application of the reduced mandatory minimum sentence would result in Defendant receiving a lower overall sentence.

e. **Ineffective Assistance of Counsel**

- i. Defendant seeks Compassionate Release based on a claim of ineffective assistance of counsel arising from information that Defendant both

- 1 1. did not know at the time of Defendant's guilty
2 plea, and
3 2. could not have known, in the exercise of due
4 diligence, at the time the Court imposed sentence.

5 19. Withdrawal or Vacatur of Defendant's Plea

6 Should Defendant successfully move to withdraw from this Plea Agreement
7 or should Defendant's conviction be set aside, vacated, reversed, or dismissed
8 under any circumstance, then:

- 9 a. this Plea Agreement shall become null and void;
- 10 b. the United States may prosecute Defendant on all available
11 charges;
- 12 c. The United States may reinstate any counts that have been
13 dismissed, have been superseded by the filing of another
14 charging instrument, or were not charged because of this Plea
15 Agreement; and
- 16 d. the United States may file any new charges that would
17 otherwise be barred by this Plea Agreement.

18 The decision to pursue any or all of these options is solely in the discretion
19 of the United States Attorney's Office.

20 Defendant agrees to waive any objections, motions, and/or defenses
21 Defendant might have to the United States' decisions to seek, reinstate, or reinitiate
22 charges if a count of conviction is withdrawn, set aside, vacated, reversed, or
23 dismissed, including any claim that the United States has violated Double
24 Jeopardy.

25 Defendant agrees not to raise any objections based on the passage of time,
26 including but not limited to, alleged violations of any statutes of limitation or any
27 objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
28 Amendment.

1 20. Integration Clause

2 The United States and Defendant acknowledge that this document
3 constitutes the entire Plea Agreement between the United States and Defendant,
4 and no other promises, agreements, or conditions exist between the United States
5 and Defendant concerning the resolution of the case.

6 This Plea Agreement is binding only on the United States Attorney's Office
7 for the Eastern District of Washington, and cannot bind other federal, state, or local
8 authorities.

9 The United States and Defendant agree that this Agreement cannot be
10 modified except in a writing that is signed by the United States and Defendant.

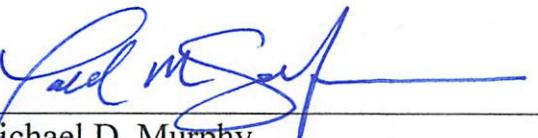
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12 Approvals and Signatures

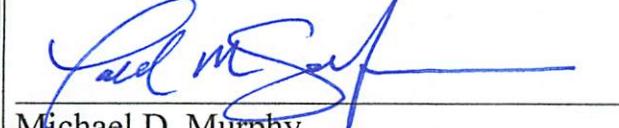
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14 Agreed and submitted on behalf of the United States Attorney's Office for
15 the Eastern District of Washington.

16 Vanessa R. Waldref
17 United States Attorney

18 
19 Michael D. Murphy

20 Assistant United States Attorney

21 
22 22 Feb 23

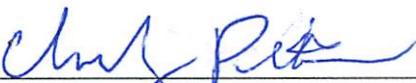
23 Date

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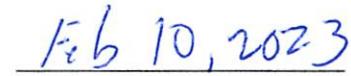
25 I have read this Plea Agreement and I have carefully reviewed and discussed
26 every part of this Plea Agreement with my attorney. I understand the terms of this
27 Plea Agreement. I enter into this Plea Agreement knowingly, intelligently, and
28 voluntarily. I have consulted with my attorney about my rights, I understand those

1 rights, and I am satisfied with the representation of my attorney in this case. No
2 other promises or inducements have been made to me, other than those contained
3 in this Plea Agreement. No one has threatened or forced me in any way to enter
4 into this Plea Agreement. I agree to plead guilty because I am guilty.

5

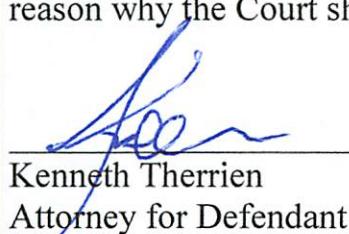


6 _____
7 Charley Jim Peters
8 Defendant



9 Date

10 I have read the Plea Agreement and have discussed the contents of the
11 agreement with my client. The Plea Agreement accurately and completely sets
12 forth the entirety of the agreement between the parties. I concur in my client's
13 decision to plead guilty as set forth in the Plea Agreement. There is no legal
14 reason why the Court should not accept Defendant's guilty plea.

15 
16 Kenneth Therrien
17 Attorney for Defendant



18 Date

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